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No. _____

In The

Supreme Court of the United States

October Term, 1980

—o—

SUCCESSION OF SIDNEY BROWN, JR.

—o—

NATHANIEL BROWN, RUBY ATKINS, BETTY JEAN LEE and EUGENE BROWN,

Respondents,

vs.

EFFIE BROWN

Petitioner.

—o—

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

—o—

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QUESTION PRESENTED

Whether the Court of Appeal, Second Circuit, State of Louisiana and The Supreme Court of Louisiana erred in declaring LSA-CC Art. 919, [1]unconstitutional under both the Equal Protection Clause of the 14th Amendment of the U. S. Constitution and Article 1 Section 3 of the Louisiana Constitution of 1974 on the holding that Article 919, arbitrarily, capriciously and unreasonably discriminates against illegitimates in the intestate succession of a father as opposed to legitimate children because of their birth status by excluding acknowledged illegitimate from participating in the succession of their father when he is survived by legitimate descendants, ascendants, collateral relative, or a surviving spouse, in which case entitles the acknowledged illegitimates to alimony from the father or his heirs.

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1 LSA-CC Art. 919

"Illegitimate children are called to the inheritance of their father, who has duly acknowledged them when he has left no decendants nor ascendants, nor collateral relations nor surviving wife, and to the exclusion only of the state. In all other cases, they can only bring an action against their father or his heirs for alimony, the amount of which shall be determined, as is directed in the Title: Of Father and Child."

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———o———

Petitioner, EFFIE BROWN, a Louisiana domiciliary, respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the Supreme Court of Louisiana

entered in this proceeding on September 3, 1980, with a Rehearing denial on October 24, 1980.

———— o ————

OPINION BELOW

The opinion of the First Judicial District Court, Parish of Caddo, State of Louisiana is an unpublished opinion rendered April 24, 1979. A copy of the opinion is included in the Appendix as Exhibit C. The opinion of the Court of Appeal Second Circuit State of Louisiana is officially published at 379 So. 2d 1172. A copy of this opinion is included in the Appendix as Exhibit B. The opinion of the Supreme Court of Louisiana is a published opinion, officially published at 399 So. 2d 1151. A copy of this opinion is included in the Appendix as Exhibit A.

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JURISDICTION

Jurisdiction in this cause is premised upon 28 U. S. C. Sec. 1 2101(c) for review by Certiorari of the judgment and opinion of the Supreme Court of Louisiana. A written per curiam opinion was issued by that court on September 3, 1980, with two justices dissenting. The petitioner, Effie Brown, timely filed a petition for rehearing. That petition was denied by split vote of the Court, with three justices stating they would grant a rehearing on October 24, 1980. A copy of the notice denying rehearing is included in the Appendix as Exhibit D.

The petitioner's request for stay of the mandate in this cause pending review by Certirorari to the United States Su-

preme Court was qualified to 60 days by Chief Justice Dixon on November 10, 1980.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Relevant portions of the Fourteenth Amendment to the United States Constitution, Article 1 Sec. 3 of the Louisiana Constitution of 1974, and Louisiana Statute Annotated Civil Code Article 919 are set forth in the Appendix as Exhibit F. Petitioner alleges and Recites Pursuant to rule (28.4(c)) that 28 U. S. C. Section 2403(b) may be applicable.

———— o ————

STATEMENT OF THE CASE

The record in this cause will reveal that Petitioner, Effie Brown, the sole and only heir of the deceased Sidney Brown, Jr. filed a petition to be placed in Possession of the estate of Sidney Brown, Jr. on February 23, 1978. The Record will further reveal that pursuant to Petitioner's petition for possession in the state district court below Honorable John R. Ballard Signed a judgment of Possession recognizing Petitioner and sending her in possession of the total estate of Sidney Brown, Jr. on February 23, 1978. The record will further reveal that Petitioner's petition for Possession set out that, the deceased Sidney Brown, Jr. died intestate on January 1, 1978, with a debtless estate. The record will further reveal that Sidney Brown, Jr. was married twice; the first marriage to Goldie Legard Brown in Caddo Parish January 20, 1929 and so remained until her death January 7, 1955, there being no children born of that marital union. The second marriage being to Edna Kinsey

Brown in 1959 which ended in divorce in 1963, there being no progeny or offsprings of this marital union. The record in this case further sets out that Sidney Brown, Jr. legally adopted Petitioner, Effie Brown an illegitimate child born to Pearl Connor and himself in 1965. The record will further reveal that Sidney Brown never adopted anyone save and except Petitioner, Effie Brown.

The record will further reveal that on February 20, 1979, Respondents filed suit, inter alia, beseeching recission of the judgment of possession which placed Petitioner, Effie Brown in legal possession of the estate of the decujus, Sidney Brown, Jr. The record will further reveal that this matter came on for trial before Honorable John R. Ballard, of the First Judicial District Court, on April 24, 1979, where at and after trial of this matter on stipulations of counsel, inter alia, recognizing respondents as acknowledged illegitimates and recognizing, Petitioner, Effie Brown, as the only adopted and only heir of Sidney Brown, Jr. . . After which the court ruled that all of respondents demands be rejected at their cost. A copy of this opinion is founded at Appendix C.

The record will further reveal that Respondents sought and received Writs of review to the Court of Appeals, Second Circuit, State of Louisiana. The record will reveal that Respondents raised initially the Federal question of the unconstitutionality of L. S. A. C. C. Art. 919 as being repugnant to the equal protection clause of the 14th Amendment to the United States Constitution both in the trial court as well as in the Appellant Courts below. The record will further reveal that on January 22, 1980, said court ruled LSA-CC Art. 919 unconstitutional intimating that Art. 919, individiously and unreasonably discriminated against illegitimates under both Article 1 section 3 of the Louisiana Constitution of 1974 as well as the equal protection clause of the 14th Amendment of the U. S. Con-

stitution. The Said Court reversed the judgment of the trial court, and annulled the judgment of possession signed on February 23, 1978; remanding the case for succession accounting purposes and assessing all cost of said Writ to Petitioner. This opinion is founded in Appendix B.

The record will equally reveal that Petitioner sought and received Writs of Certiorari from the Supreme Court of Louisiana to review the judgment of the Court of Appeals, Second Circuit, State of Louisiana. The record will equally reveal that this case was argued before the Supreme Court of Louisiana on June 24, 1980. The record will further reveal that on September 3, 1980, the Supreme Court of Louisiana affirmed the decision of the Court of Appeals, Second Circuit, State of Louisiana ruling that LSA-CC Article 919 was unconstitutional under both the equal protection clause of 14th Amendment to the U. S. Constitition as well as LSA-Louisiana Constitution Article 1 Sec. 3 of 1974. A copy of this opinion is found in Appendix C.

Petitioner first and foremost argues and contends to the contrary as articulated by the Court of Appeals Second Circuit, Parish of Caddo and the Supreme Court of Louisiana that *Trimble*, Supra did not directly or indirectly overrulled *Labine V. Vincent*, for this proposition Petitioner relies upon both *Trimble* and *Lalli* Supra.

Petitioner contends vigorously and clearly that quite to the contrary that the power to make rules to establish, protect and strengthen family life as well as to regulate disposition of property left in Louisiana by man dying there is committed by constitution of the United States and people of Louisiana to legislature of that state and absent specific constitutional quaranty, it is for the legislature not life-tenured judges of the United States Supreme Court to select from among possible

laws. Petitioner contends that *Trimble*, did not directly nor indirectly overruled *Labine*.

Petitioner forewith also contends and argues the both the Court of Appeals for the Second Circuit and the Supreme Court of Louisiana misplaces its articulation in *Succession of Robins*, Supra, Petitioner contends that *Robins*, Supra, was a case which dealt with a testate succession and not a case which dealt with intestate succession rights of illegitimates versus legitimate childrens. Petitioner contends that although Article 1 Section 3 of the Constitution of 1974 ought to be utilized in analyzing Article 919, the rationale articulated by Supreme Court of Louisiana in *Robins*, had nothing whatever to do with intestate successions rights as they relate to illegitimate versus legitimate childrens. Petitioner appellant invites this court's attention to *Robins*, at P. 277, where at, the court stated:

> Preliminarily, we emphasize that the present issue does not arise in the context of passing upon the reasonableness of legislative classifications of legitimate versus illegitimate children for purposes of intestate heirship, Article 886-88, 902, 917-920, nor even for purposes of testamentary succession, Article 1483, nor does it arise in the context of the legislative reasonableness of the intestate succession of a surviving widow to her husband's property in default of legitimate descendants to the exclusion of the husband's illegitimate children, Articles 917, 919.

Petitioner concludes that argument of Respondents and the court below must fall as being misplaced and not appropriate for resolution of the constitutionality of article 919.

Petitioner contends and argues firstly that La. C. C. Article 919 is constitutional in that it satisfied the two-tier equal protection approach test in determining the constitution-

ality of a state statute. Petitioner invites this courts attention to a meticulous perusal of Article 919.

LSA. CC ARTICLE 919, in text reads:

> "Illegitimate children are called to the inheritance of their father, who had duly acknowledged them, when he has left no descendants nor ascendants, nor collateral relations, nor surviving wife, and to the exclusion only of the state. In all other cases, they can only bring an action against their fathers or his heirs for alimony, the amount of which shall be determined as directed in titled: Of Father and Child (amended by acts 1979, no 607 section 1.).

Petitioner contends that by applying the lowertier approach i. e. the rational basis approach. In essence, a statute would only be condemned on this tier of analysis if the classification bore no rational relationship to a legitimate state purpose. Petitioner contends without argument as conceded by the court below and plaintiff-appellees that the orderly disposition of property of a man dying in this state is a valid state interest to protect, (see *Labine, Trimble* and *Lalli,* Supra, thus with the reality of a protected state interest clearly and equally a reality the state has the right to classify and make rules to regulate the disposition of property left in Louisiana by a man dying there, (see *Labine, Trimble,* and *Lalli,* Supra) so long as there exist a rational basis between the statute and the interest it beseeched to protect.

Petitioner contends that Louisiana's law of intestate inheritance by illegitimates is based on the initial classification of the child. The Civil Code categorize children as either legitimate, illegitimate, or legitimated. Legitimates are those born within the marriage, illegitimates are those born without wedlock and who have not been subsequently legitimated. Legitimated children are those born without marriage but whose parents

have subsequently married and have also formally or informally acknowledged them. Legitimated children are treated as legitimates and obtain the same right of inheritance. However, illegitimates are treated differently from legitimates.

Petitioner contends that although the fourteenth amendment mandates that no state deny a person equal protection of the law, it does not require absolute equality for all. Therefore, certain classifications by statutes maybe valid, even though they allow, and indeed may even promote, inequality. In regard to equal protection, the question is not whether all persons maybe treated identically, but whether all persons alike, i. e. similarly situated are treated similiarly.

Petitioner forcefully contends and argues that the classification of children as legitimates and illegitimates clearly bears a direct rational relationship to the orderly disposition of property of a man dying in this state.

Petitioner contends that by applying the similar situated standard of the lower tier rational relation approach it is clear that similar situated illegitimated are treated alike and are not individously discriminated against in the legislative context of Article 919.

Petitioner argues and further contends that article 919 is not subject to the second tier strict scrutiny test because its classification of children and heirs are not suspect in the Equal Protection sense, (see *Trimble*, Supra and) nor has the United States Supreme Court has accorded inheritance rights as fundamental rights within the Equal Protection clause affording a statute application of the strict scrutiny test.

Petitioner contends and argues that both the court below

and herein Respondents would have this court believe that article 919 totally excludes illegitimates from the succession of there father, clearly this is not true nor is it an accurate description of the legislative text of article 919.

Petitioner contends that a mere reading of article 919, clearly reveals that an acknowledged illegitimate is not automatically precluded from inheriting the intestate succession of his father. In fact La. C. C. Article 919, specifically provides for the duly acknowledged child to take from his father. Petitioner contends that nor is the acknowledged illegitimated child barred from receiving by way of a will. Petitioner further contends that is to be noted in the classification recognized in Louisiana that all similiarly situated legitimates and illegitimate children are treated alike notwithstanding the fact that illegitimates enjoy a less favorable ranking position in the intestate succession of their father, nonetheless they are all treated similiar.

Petitioner further contends that article 919 satisfied constitutional scrutiny in that its legislative text clearly affords illegitimate children to bring an action for alimony either against the father or the heir of the father if the father be deceased if the child proves his parenthood and his need for alimony.

Petitioner contends and argue further the validity of article 919 on the basis of the lurking problems associated with proof of paternity. Petitioner contends that it is clear articulation of this court that a state may discriminate against illegitimates if to do so is for the protection of a valid state interest and the means and procedure utilized to further those ends and interests bears a rational relationship to the interest sought to be protected. (see *Labine*, *Trimble* and *Lalli*, Supra.) Petitioner contends that historically and presently all states recognized in

there successions laws the easiness of proving maternity and the more onerous and difficult problems of proving peternity. Petitioner contends that the position of the illegitimate in the succession of the father even though lower than that for the mother seeks to protect the vital state interest of the disposition of property of a man dying in Louisiana by treating all illegitimates of the father, i. e. all similar situated illegitimates alike. Petitioner contends that there exist many difficult and hard problems associated with the proof of paternity and the difficult problems associated with proof of Paternity rationally aids in the furtherance of the orderly disposition of property of a man dying in this state without a will by seriously reducing greatly fraudulent and spurious claims by imposters who pretend to be lawful illegitimates of the decujus. For it is impossible for a man to disprove paternity beyond his death. Petitioner argues and contends that the court below and herein Respondents would have this court believe that article 919 is unconstitutional on the premise that it does not provide for carefully tuned alternative consideration on the middle ground approach by not recognizing some significants categories of illegitimates of intestate men whose inheritance rights can be recognized without jeopardizing the orderly settlement of estates or the dependability of titles to property passing under intestacy laws. Petitioner contends and argues that this argument like Respondents other argument must fall for lack of substance. Petitioner contends that choices and alternative do in fact exists. Petitioner contends that the decujus could have as was done in the instant case adopt his illegitimate child or children; the decujus could have left a will giving the illegitimate child or children portion of his estate, and of course the decujus could have legitimated the child or children by subsequent marriage to his, her, or their mother. Petitioner notes with high interest and particular importance article 919 is unlike the Illinois statute in *Trimble*, Supra, which did not allow illegitimate children born without

marriage to inherit from their father, only from their mother, but did allow legitimate children born within the marriage to inherit from both mother and father. Petitioner contends that in Louisiana illegitimate children can and are allowed to inherit from both their mother's and father's, which does not as in the case in *Trimble*, invidiously discriminates against a large mass or class of illegitimate children by not allowing illegitimates to inherit from their father. Petitioner contends that all similarly situated illegitimates in Louisiana are called to the intestate inheritance of their mother and father although in different ranking position due to the lurking problems associated with the proof of paternity as opposed to the easiness of the proof of maternity.

Petitioner contends that the court below and Respondents would have this Honorable Court believe that the statute in *Trimble*, and Article 919, are mirror images of one another, and that since the court struck down the Illinois statute in *Trimble*, Supra, that this Honorable Court should use this occasion to strike down La. C. C. Article 919. Petitioner contends without additional argument that *Trimble*, is not controlling in the instant case. Rather Petitioner contends that *Labine* is still good law and is controlling on those points where it has not been deflated especially that of the regulation of the orderly disposition of property of a man dying intestate in this state.

Petitioner contends and argues that article 919 unlike the Illinois statute in *Trimble*, permitted all similiarly situated illegitimates to inherit from the father and mother in similiar situated way as prescribed by article 918 and 919. The Illinois statute in *Trimble* totally excluded inheritance by illegitimates from their father's succession. However, the statute did afford inheritances right to illegitimates of the mother. The Illinois

statute also provided for inheritance from both mother and father to children born within the marriage. Unlike the Illinois statute which did not allow an illegitimate to inherit from father's notwithstanding, the illegitmate had obtained a paternity judgment against the deceased during his life time, article 919 does in fact allow illegitimates to inherit from their father who have proven paternity. Unlike the Illinois statute which doesn't even allow the illegitimate who has proven paternity even alimony article 919 does in fact allow the illegitimate the right to seek alimony from their father and if deceased, then from the heirs of the father if he can both proven paternity and his need for alimony. Unlike article 919, the Illinois statute required in addition to the father's acknowledgement of paternity, the legitimation of the child through the intermarriage of the parents as an absolute precondition to inheritance. This combination of requirement eliminates the possibility of a middle ground between the extremes of complete exclusion and case by case determination of paternity.

Petitioner contends that a mere reading of both *Trimble*, *Labine* and the instant case clearly without the smallest doubt is clearly and entirely reveals that *Trimble* is easily distinguishable from *Labine* and the instant case. Petitioner contends and alleges that every thing the court below and Respondents states that article 919 does not do we think it clearly does. Petitioner contends clearly article 919 doesn't totally exclude all illegitimates from the inheritance of their father, for the mere reading of article 919, clearly calls the illegitimate to the inheritance of their father in absence of other priming heirs; Petitioner contends further that illegitimates are afforded the right via article 919 when primed by priority heirs to institute and action for alimony and support.

Petitioner contends even further contrary to the court below and Respondents that there does exist the middle ground

position for those heirs who may inherit without disrupting the orderly disposition of property of the decujus left intestate in this state.

Petitioner argues clearly that a mere reading of article 919 constitute the middle ground position between a complete exclusion and determination of a case by case basis of paternity. This brief writer submits that all illegitimated have the right to inherit equally in the intestate succession of the father notwithstanding their lower ranking position in the father's succession and this is true because of the many grave and serious problems associated with the proof of paternity; defendant submits that though illegitimates are or maybe discriminated in this regard the discrimination is justified because it bears a tremendous relational-rational basis toward the protecting of the vital compelling state interest of regulating the orderly disposition of property of an intestate decujus dying in this state.

Petitioner clearly states that nowhere is article 919 is it even suggested that illegitimates cannot inherit from the succession of the intestate decujus father who left property within this state at the time of his death.

Petitioner further contends that indeed a very strong rational relationship exist between article 919 and the goal and objective it seeks to protect. For if article 919 did not exist then the states vital interest could not be successfully protected, for land dispositions would result in complete choas and courts of this state would be confronted with a pandora's box unleashed with a flood of spurious and fraudulent paternity claims. This is true for in some events even the mother does not know who the father of the child is and the putative father often goes his way unconscious of the birth of a child.

Even if conscious of the birth, he is very often totally unconcerned because of the absence of any ties to the mother, (see *Lalli* at p. 525).

Petitioner cites the below quote from *Lalli* at page 525 which evidence the procedural problems of treating legitimate and illegitimate children alike.

> "Although the over reaching purpose of the proposed statute was" to alleviate the plight of the illegitimate child, commission report 37, the Bennett Commission considered it necessary to impose the strictures of Sec. 4 - 1.2 in order to mitigate serious difficulties in the administration of the estates of both testate and intestate decendents. The commissions perception of some of these difficulties was described by Surrogate Soble, a member of the "busiest Surrogate's court in the state measured by the number of intestate estates which traffic daily through this court," In re Flemm, Supra at 857, 381 N. Y. S. 2d at 574(Sobel S.) and a participant in some of the commissions deliberations:
> "An illegitimate, if made an unconditional distributee in intestacy, must be served with process in the state of his parent or kindred of a parent . . . and, in probating the will of his parent (though not named a beneficiary) or in probating the will of any person who makes a class disposition to issue of such parent, the illegitimate must be served with process . . . How does one cite and serve an illegitimate whose existence neither family nor personal representative may be aware? And the greatest concern, how achieve finality of decree in any estate when there always exists the possibility however remote of a secret illegitimate lurking the buried past of a parent or ancestor of a class of beneficiaries? Finality in decree is essential in the surrogate's courts since title to real property passes

under such decree. Our procedural statutes and the due process clause mandate notice and opportunity to be heard to all illegitimates must be served with process. This would be no real problem with respect to those few estates where there are known illegitimates. But it presents an almost insuperable burden as regards unknown illegitimates."

Petitioner contends and relies on the articulation in *Lalli*, that illegitimates are in a rightful classification and cannot be accorded equal rights of legitimates children for to do so would clearly wreak and create an undue choatic area of darkness of a majority of all land titles in this state, for the high probability of never obtaining a final judgment would be ever presen because of the unknown illegitimates who have not been served coming in time and time again seeking an inheritance portion the decujus estate. Petitioner contends that this would be an unnnecessary continuing problem if illegitimates were afforded the same rights legitimates for there does not exist any dry fast method or procedure to ascertain the identity of all unknown illegitimates, who create the ever present problem of prevention of a final judgment. This brief writer, thinks not only would this state be faced with the problem of not being able to obtain a final judgment, but clearly would be faced with a flood of fraudulent claims by pretended imposters seeking riches in land an estates of a decujus who died intestate, for a dead man cannot rebut nor defend a paternity suit.

Petitioner vigorously contends that at this late date in the history of the Louisiana succession laws, that any and all probative value that a legislature change in such law effecting equality between illegitimates and legitimate children in succession of their father and/or parents is overwhelming outweighed by the insurmontable prejudicial effect it would have upon succession laws and land titles in this state.

Petitioner contends that this state and Nation could not withstand the legal choatic frustration that is indeed inherent should such a legislature change be effected. We think clearly that to the end of protecting the orderly disposition of land titles in this state and the Nation that the classifications, with different ranking accorded each class; discriminatory, however, is clearly justified and bears the heaviest rational-reasonable relationship of achieving the orderly disposition of land titles of a decujus dying intestate in this state and in other states of this Nation.

CONCLUSION

Petitioner contends in conclusion that based upon the above cited law and argument of this brief-writer leads to one inescapable conclusion, i. e., that La. C. C. Article 919, is clearly constitutional under both La. C. Article 1 Section 3 and under the Equal Protection Clause of the Fourteenth Amendment of the U. S. Constitution.

WHEREFORE, Petitioner prays that after due proceeding the judgment of the Supreme Court of Louisiana be reversed reinstating the constitutional validity of La. C. C. Article 919, as well as reviving and reinstating the judgment of possession and taxing all court costs at Respondents expenses.

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REASONS FOR GRANTING THE WRIT

The decision below of the Supreme Court of Louisiana is in conflict with the decision of this, the Supreme Court of the United States concerning a States right to makes rules to establish, protect and regulate disposition of property left in Louisiana by a man dying in the State of Louisiana or any other State of this Nation.

This case presents a substantial and significant Federal question of whether a State's intestate succession laws with classifications of legitimacy and illegitimacy which reasonably discriminates against illegitimates as opposed to legitimate descendants violates the Equal Protection Clause of the Fourteenth Amendment when the State has the compelling interest of protecting the orderly disposition of property of a Decujus dying intestate when the classification and discrimination are both reasonable and bears the strongest of rational relationship to the State interest is clearly unsettled, cloudy and in National dispute; which must be settled and put to rest by this Court.

This Court held in *Labine V. Vincent*, 401(U. S. 532, (1971). *Trimble V. Gordon*, 430 U. S. 762, *Lalli V. Lalli*, 99SC. T. 518 (1978), that Power to make rules to establish, protect as well as to regulate disposition of property left in Louisiana by a man dying there is committed by the Constitution of the United States and people of Louisiana to Legislature of that State. This Court held in *Labine V. Vincent*, Supra, that,

> "Choices reflected by Louisiana intestate Succession provisions, which precluded illegitimate children, though duly acknowledged, from claiming rights of legitimate children and which permitted inheritance by illegitimate children, acknowledged by their father, were choices

> within the power of the State to make, and they were not in contra-Vention of the Equal Protection or Due Process Clauses."
>
> "Of course, it may be said that the rules adopted by the Louisiana legislature discriminates against illegitimates. But the rules also discriminates against collateral relations, as opposed to ascendants, and against ascendants as opposed to descendants. Other rules determining property rights based on family status also discriminates in favor of wives and against concolsines".

This court articulated in *Lalli V. Lalli*, 99S. Ct. 518 (1978) that a State may prescribe any formal method of proof of paternity, whether similiar to that provided by New York statute providing for affiliation order by court of competent jurisdiction or some other regularized procedure that could insure authenticity of acknowledgment. This court further articulated in *Trimble V. Gordon*, 430 U. S. 762, (1977) at p. 1460, that "Classification based on illegitimacy is not suspect so as to require that it survive strict scrutiny but it must, at a minimum, bear some rational relationship to a legitimate state purpose U. S. C. A. Constitution Amendment Fourteenth.

This Court further intimated in *Trimble* Supra, at page 1465, that

> "The orderly disposition of property at death requires an appropriate legal framework, the structuring of which is a matter particularly within the Competence of the individual states".

Petitioner contends that based upon this Courts ruling in

the above and foregoing cases as respect a states right to regulate the orderly disposition of property of a decujus dying intestate in this State though they may reasonably discriminates against illegitimates as opposed to legitimate children are nonetheless valid for they do not individiously nor capriciously and unreasonably discriminates against illegitimates because of their birth rights as held by the Supreme Court of Louisiana.

APPENDIX

EXHIBIT A

SUPREME COURT OF LOUISIANA

NEW ORLEANS, LOUISIANA 70112

HEARD JUNE 24, 1980

SEPTEMBER 3, 1980

Before
SUPREME COURT OF LOUISIANA
En banc

SUCCESSION OF SIDNEY BROWN, JR.

NO. 67,211

ON WRIT OF CERTIORARI
Second Circuit Court of Appeal
Parish of Caddo
No. 14,034
Jasper Jones, Circuit Judge

App. 2

SUPREME COURT OF LOUISIANA

SUCCESSION OF
SIDNEY BROWN, JR. NO. 67,211

On Writ of Certiorari
Second Circuit Court of Appeal
Parish of Caddo

BLANCHE, Justice.

Sidney Brown, Jr. died intestate on January 1, 1978 in Shreveport, Louisiana. He is survived by four acknowledged illegitimate children, respondents, and one adopted child, relator. Relator had also been an illegitimate until her adoption in 1965, which gave her the status of a legitimate child. The Decedent was married two times. His first wife died in 1955 and there were no progeny of this marriage. His second marriage ended in divorce in 1963 and, likewise, there were no progeny of this marriage. The decedent left a net estate valued at $4800.

Respondents, Ruby Atkins, Betty Jean Lee, Nathaniel Brown and Eugene Brown, sued to annul a judgment of possession recognizing the relator, Effie Brown, as the sole heir of the decedent. The First Judicial District Court ruled against the respondent's request. In an excellent and comprehensive opinion, the Second Circuit Court of Appeal reversed and remanded the case to the trial court for an accounting by the relator and the execution of a new judgment of possession

recognizing the respondents as the lawful heirs of Sidney Brown, Jr., along with the relator. We affirm.

At issue is the constitutionality of Article 919 of the Louisiana Civil Code. We take jurisdiction to decide this constitutional matter on the basis of the 1974 Louisiana Constitution, art. 5 Sect. 5 (D). We declare C. C. art. 919 to be unconstitutional on the basis of the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution, and art. 1, Sec. 3 of the 1974 Louisiana Constitution.

Article 919 excludes acknowledged illegitimates from participating in the succession of their father when he is survived by legitimate descendants, ascendants, collateral relatives, or a surviving spouse. The trial court, following the letter of the statute, excluded the respondents because of the existence of the relator as a legitimate child of their father.

To uphold the constitutionality of Art. 919 under an equal protection analysis, it must be shown that the classification is "substantially related" to permissible state interest, *Lalli V. Lalli*, 439 U. S. 259, 99 S. Ct. 518, 58 L. Ed. 2d 503 (1978). Under this same standard, the United States Supreme Court earlier decided, in *Trimble V. Gordon*, 430 U. S. 762, 97 S. Ct. 1459, 52 L. Ed. 2d 1459 (1977), that an Illinois statute discriminating against an illegitimate in inheriting from his father was unconstitutional.

Previously, the United States Supreme Court held that art. 919 was constitutional, *Labine V. Vincent*, 401 U. S. 532, 91 S. Ct. 1017, 28 L. Ed. 2d 288 (1971). However, at that time,

the Court used a test of "minimum rationality" under the old scheme of equal protection analysis, *City of New Orleans V. Dukes*, 417 U. S. 297, 96 S. Ct. 2513, 49 L. Ed. 2d 511 (1976). The two tier approach of *Dukes* has been refined to allow for a middle level of analysis for statutes based on such categories as sex, *Orr V. Orr*, 440 U. S. 268, 99 S. Ct. 1102, 59 L. Ed. 2d 306 (1979); birth, *Matthews V. Lucas*, 427 U. S. 495 96 S. Ct. 2755, 49 L. Ed 2d 651 (1976); and illegitimates, *Lalli*, supra, and *Trimble*, supra.

Though *Trimble* does not expressly overrule *Labine*, it forecasts the proper analysis on a more critical examination of the statute:

> "Despite these differences it is apparent that we have examined the Illinois statute more critically than the court examined the Louisiana statute in *Labine*. To the extent that our analysis in this case differs from that in *Labine*, the more recent analysis controls." *Trimble* 97 S. Ct. 1468, n. 17

Under this analysis, the classification set forth in Art. 919 must be substantially related to permissible state interests.

The three state interests advocated are the promotion of legitimate family relationships, the possibilities which the father could have exercised to insure the illegitimates a part of the succession, and the orderly disposition of property at death. The first two interests were specifically rejected in *Trimble*. The third was the maker reason for the upholding of the New York statute's constitutionality in *Lalli* and will be discussed in greater detail here.

Trimble rejected as proper justification for a statute which discriminates against illegitimates the promotion of legitimate

family relationships accepted in *Labine* by "only the most perfunctory analysis", *Trimble*, p. 1464. This "family harmony" state interest is even weaker in this case. The Decedent had five illegitimate children, none of them the progeny of his two marriages. Four were openly acknowledged and one was adopted, so that the existence of all five was equally known and not threat to any family harmony even existed. Even if it had, the *Trimble* Court expressly rejected the argument that a state may attempt to influence the actions of men and women by imposing sanctions on the children born of their illegitimate relationships, *Trimble*, pp. 1464-5. We agree that the innocent children should not suffer from the promiscuous adventures of their parents.

Trimble, pp. 1466-7, also made clear that the *Labine* possiblities as to how the father could have insured the illegitimates a part of the succession are mere hypotheses which will not clear the statute of its underlying invalidity. The idea that the father could have left a will, or legitimated, or even adopted the illegitimates does not serve as a sufficient state interest so as to constitutionally clothe art. 919. The acknowledged illegitimate has no recourse to force his father to leave a will, to legitimate, or to adopt him. The point is, the father did not pursue any of the above possiblities, and the acknowledged illegitimates' rights should not hinge on mere hypotheses of what the father might have done.

The only remaining rationale from *Labine* left valid after *Trimble* is the state's interest in the orderly disposition of property at death. *Lalli*, p. 524-5, re-emphasized this valid state interest; however, *Trimble* recognized this important interest is not unquestionable, but must yield in the fact of constitutional mandates.

The state interest of stable land titles and orderly disposition of property will withstand an equal protection analysis, if the state statute provides the illegitimate some way to obtain equal protection, *Lalli*. In *Lalli*, the Court upheld a New York statute which required the illegitimate to have his parental filiation declared by a competent court before his father's death in order to share in the inheritance.

The requirement of a filiation order during the lifetime of the father was held to be substantially related to the important state interests, and, therefore, the statute passed constitutional equal protection muster. Problems such as proof of paternity, service of process, finality of decrees in estate distribution, and spurious claims were all recognized in *Lalli*, p. 525-6, and the New York statute requiring proof of filiation before death cured them. Louisiana could, likewise, anticipate and solve these problems with a statute that allows the acknowledged illegitimate to relieve his predicament rather than relying upon present art. 919, which flatly denies him succession rights if other relative exist.

Article 919 likewise violates art. 1 Sec. 3 of the 1974 Louisiana Constitution, which states:

> "No person shall be denied the equal protection of the laws. No law shall discriminate against a person because of race or religious ideas, beliefs or affiliations. No law shall abritrarily, capriciously, or unreasonably discriminate against a person because of birth, age, sex, culture, physical condition, or political ideas or affiliations. Slavery and involuntary servitude are prohibited, except in the latter case as punishment for crime."

The members of the constitutional convention intended this article to include within its scope unreasonable discrimination based upon illegitimacy, *Succession of Thompson*, 367 So. 2d 798 (La. 1979).

The distinction drawn by art. 919 between these acknowledged illegitimates and all other relations of the decedent is abritrary, capricious, and unreasonable. This conclusion is not a recent development, for it is but a further extension of a line of judical determinations striking down Louisiana laws which discriminate unconstitutionaly against illegitimates.

Three times the United States Supreme Court has invalidated Louisiana statutes because of their denial of equal protection rights to illegitimates. *Levy V. La.*, 391 U. S. 68, 88 S. Ct. 1509, 20 L. Ed. 2d 436 (1968); *Weber V. Aetna Casualty & Surety Co.*, 406 U. S. 164, 92 S. Ct. 1400, 31 L. Ed. 2d 768 (1972); and *Glona V. American Guarantee & Liability Ins. Co.*, 391 U. S. 73, 88 S. Ct. 1515, 20 L. Ed 2d 441 (1968). Using art. 1, & 3 of the 1974 Louisiana Constitution, this court has found unconstituional certain testate codal provisions which discriminate against illegitimates, Succession of Thompson, supra and Succession of Robins, 349 So. 2d 276 (La. 1977).

Thus, both the United States and Louisiana Constitutions prohibit the total denial of inheritance rights of acknowledged illegitimates in the succession of the father who is survived by other relations. From our examination of art. 919, it is apparent that the respondents are being discriminated against because of their birth status, for had they been born legitimate, or made legitimate as the relator was, they would have succeeded with the relator to heir father's succession. Absent any legislative authority to remedy their loss of succession rights as the children of their father, we find the statute denies them the equal protection of the law.

For the above reasons, art. 919 is declared unconstitutional and the decision of the Second Circuit Court of Appeal is affirmed.

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[1]See the proposed guidelines suggested by Professor H. Alston Johnson in his Report to the Louisiana State Law Institute (Revision of the Louisiana Civil Code of 1980, Book III, Titles I and II, Succession and Donations, December 7, 1979).

SUPREME COURT OF LOUISIANA

NO. 67,211

SUCCESSION OF
SIDNEY BROWN, JR.

MARCUS, Jestice (dissenting)

While it is true that both the federal and state constitutions prohibit the total denial of inheritance rights of acknowledged illegitimates in the succession of the father who is survived by other relations, art. 919 does not prohibit these rights as it is applicable only to intestate successions. In *Lalli*, the United States Supreme Court held that a state does have a legitimate interest in the orderly disposition of property at death. Thus, the law does not mandate that art. 919 be declared unconstitutionaly. Accordingly, I respectfully dissent.

SUPREME COURT OF LOUISIANA

NO. 67,211

SUCCESSION

OF

SIDNEY BROWN, JR.

WATSON, Justice, dissenting.

Faced with an appealing factual situation, the majority has chosen to call acknowledged illegitimates to the intestate

succession of their father, despite a legitimate forced heir. Although the realtor, Effie Brown, was an illegitimate until her adoption, she now enjoys legitimate status in the eyes of the law. The respondents, unfortunately, were never adopted and have the status of illegitimacy, but will share equally with the forced heir.

The majority relies on the United States Supreme Court cased of *Trimble V. Gordon*, 97 S. Ct. 1459 (1977) and *Lalli V. Lalli*, 99 S. Ct. 518. These cases differ on the facts with the instant case. In *Trimble* the illegitimate was claiming against ascendants and siblings of the deceased, not against a legitimate child. In *Lalli* the illegitimate was claiming against the father's legal widow. It is true that in *Trimble*, the United States Supreme Court declared unconstitutional a certain provision of Illinois law which prevented the illegitimate child from inheriting. However, in *Lalli* the opposite result was reached; the illegitimate was denied inheritance rights. Since New York law provides that an illegitimate, during the lifetime of the father, can achieve rights of inheritance, through judicial proceedings, this was held sufficient to accord equal protection. The justices of the United States Supreme Court differ among themselves as to the effect of *Lalli* on *Trimble*. (See concurring opinion of Blackman, J., S. Ct. 529.)

Trimble and *Lalli* do not require the result reached by the majority. The stability of land titles, the just and orderly disposition of property at death, and the dangers of the "secret illegitimate" (Lalli, 99 S. Ct. 526) are so important that this court should not strike down the historical forced heirship system of Louisiana.

Therefore, I respectfully dissent.

EXHIBIT B

COURT OF APPEAL
SECOND CIRCUIT
Shreveport, Louisiana 71101

January 22, 1980

Before
Hon. Charles Marvin, Circuit Judge
Hon. Jasper Jones, Circuit Judge
Hon. Enos C. McClendon, Ad Hoc Judge

SUCCESSION OF SIDNEY BROWN, JR.

Appeal From The
First Judicial District Court for the
Parish of Caddo, Louisiana
NO. 14, 034
John R. Ballard, Judge

JONES J.

Plaintiffs, Ruby Atkins, Betty Jean Lee, Nathaniel Brown, and Eugene Brown, sue to annul a judgment of possession recognizing defendant, Effie Brown, as the sole heir of Sidney Brown, Jr. From a judgment rejecting their demands plaintiffs appeal. At Issue is the constitutionality of Article 919 of the Louisiana Civil Code under the Equal Protection Clause of the Fourteenth Amendment to the U. S. Constitution and under Article 1, S3 of the Louisiana Constitution. We reverse, finding Article 919 to be invalid under both of these constitutional provisions.

All parties at trial stipulated that plaintiffs are the ac-

knowledged illegitimate children of Sidney Brown, Jr., who died on January 1, 1978 in Caddo Parish with no children having been born of his two marriages. He had, however, in 1965 adopted defendant, Effie Brown, who was formerly another illegitimate child. On February 20, 1979 plaintiffs filed this suit seeking a rescission of the judgment of possession.

As amended by Act 607 of 1979's regular session, Article 919 [1] provides as follows:

> "Illegitimate children are called to the inheritance of their father, who has duly acknowledged them when he has left no descendants nor ascendants, or collateral relations, nor surviving wife, and to the exclusion only of the State . . ."

Article 919 excludes acknowledged illegitimates from participating in the succession of their father when he is survived by legitimate descendants, ascendants, collateral relatives, or surviving spouse. Plaintiffs challenge this article as infringing upon their constitutional guarantee of equal protection of the law because of Article 919 discriminates against acknowledged illegitimates in a constitutionally impermissible manner. Plaintiffs contend that on the basis of *Trimble V. Gordon*, 430 U. S. 762, 97 S. Ct. 1459, 52 L. Ed. 2d 1459 (1977): and *Lalli V. Lalli*, 439 U. S. 259, 99 S. Ct. 518, 58 L. Ed. 2d 503 (1978), Article 919 is no longer constitutionally valid.

Article 919 was previously challenged in *Labine V. Vincent*, 401 U. S. 532, 91 S. Ct. 1017, 28 L. Ed. 2d 288 (1971). The

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[1] This Act made no substantive change in Art. 919. It substituted the word illegitimate for natural as the first word in the article and eliminated the word natural preceding the word father.

U. S. Supreme Court therefound Article 919 not to be a violation of the rights of the acknowledged illegitimate. The court held that because the State of Louisiana has the power to regulate the disposition of property left in Louisiana by a man dying there, because Louisiana has the authority to make rules designed to strengthen family life, and because there was no insurmontable barrier created by Louisiana to prevent this illegitimate from inheriting, Article 919 was free from any constitutional infirmities. The scrutiny given Article 919 was quite cursory and was comparable to the minimal equal protection analysis give legislation in the sphere of police power and economic regulation. See City of *New Orleans V. Dukes*, 427 U. S. 297, 96 S. Ct. 2513, 49 L. Ed. 2d 511 (1976), in which it was stated:

> "Unless a classification trammels fundamental personal rights or is drawn upon inherently suspect distinctions such as race, religion, or alienage, our decisions presume the constitutionality of the statutory discriminations and require only that the classification challenged by rationally related to a legitimate state interest." Id. at 516-517.

However, this minimal scrutiny has been rejected as the proper test of a statute discriminating against persons on account of the illegitimacy of their birth (*Trimble* and *Lalli*, supra). The two tier approach discussed in Dukes, supra, (strict scrutiny for all statutes trammeling fundamental personal rights or drawn upon the suspect classes of race, religion, or alienage and minimal scrutiny for all other statutes) has been augmented by a middle level of analysis for statutes grounded upon such categories as sex (*Orr V. Orr*, 440 U. S. 268, 99 S. Ct. 1102, 59 L. Ed. 2d 306 (1979)). The test to be applied is not the minimal protection one used in *Labine* in 1971 but is now this middle level of much more scrutinizing inquiry:

> ". . . classifications based on illegitimacy are not subject to "strict scrutiny", they nevertheless are invalid under to Fourteenth Amendment if they are not substantially related to permissible state interests." *Lalli* at 523. (emphasis ours)

Under this level of equal protection analysis the Illinois statute in *Trimble*, which permitted an illegitimate to inherit from his or her father only if the father had both acknowledged the child and married the mother, was held to be constitutionally infirm. The court in *Trimble*, in addition to affirming Mathews' rejection of the minimal scrutiny used in *Labine*, also repudiated two of the "rational" bases upon which *Labine* was grounded. *Trimble* rejected as proper justification for a statute discriminating against illegitimates the promotion of legitimate family relationship accepted in *Labine* by "only the most perfunctory analysis". *Trimble* at 1464. The court found the Illinois statute to bear "only the most attenuated relationship to the asserted goal", *Trimble* at 1464, that is, the promotion of legitimate families. "(We) have expressly . . . rejected the argument that a state may attempt to influence the actions of men and women by imposing sanctions on the children born of their illegitimate relationships." *Trimble* at 1464-65. This ground upon which Article 919 was held constitutional is therefore now invalid.

The court also rejected the presence or absence of an insurmountable barrier to the illegitimate's right to inherit as being "an analytical anomaly" (*Trimble* at 1467) and unacceptable as a rational basis to support the discrimination. Here, as in *Trimble*, the issue is the constitutionality of a state intestate succession law that treats illegitimate children differently from legitimate children. The law is to be analyzed as to whether this legislative distinction is justified by the achievement of recognized state objectives. *Trimble* makes clear that *Labine's* postulations as to how the illegitimate could have succeeded to her

father's estate (e. g., if the father had left a will, if the father had legitimated her) are mere hypotheses which will not clear the statute of its underlying invalidity. "Hard questions cannot be avoided by a hypothetical reshuffling of the facts." *Trimble* at 1467.

The only remaining rationale from *Labine* left valid after *Trimble* is the state's interest in the orderly disposition of property at death. *Trimble* recognized that this acceptable state goal is "particularly within the competence of the individual states". *Trimble* at 1465. The court recognized that the difficult and grave problems of proving paternity "might justify a more demanding standard for illegitimate children claiming under their fathers' estates than that required either for illegitimate children claiming under their mother's estates or for legitimate children generally." *Trimble* at 1465. *Lalli*, supra, re-emphasized the fact that the just and orderly devolution of property is an area in which the states have an important interest. However, this important interest is not unquestionable but must yield in the face of constitutional mandates.

> "For at least some significant categories of illegitimate children of intestate men, inheritance rights can be recognized without jeopardizing the orderly settlement of estates or the dependability of titles to property passing under intestacy laws." *Trimble* at 1465.

The court in *Trimble*, supra, recognized that the problems of proof of paternity may warrant some discrimination against illegitimates but that any state statute so doing must be "carefully tuned to alternative considerations" (quoting from Mathews, supra). The Illinois statute contained no alternative considerations and was broadly prohibitive to illegitimates who had been acknowledged but whose parents had not married one another. As stated in *Trimble* at p. 1466:

"Difficulties of proving paternity is some situations do not justify the total statutory disinheritance of illegitimate children whose fathers die intestate."

Lalli, supra, contained the Supreme Court's next declaration as to how states may constitutionally achieve their goal of stable land titles and orderly disposition of property and at the same time award illegitimates equal protection of the law. In this case a New York law requiring an illegitimate to obtain an order of filiation within two years of his birth (although the court looked at the statute only from the viewpoint that it required a filiation order during the lifetime of the father, see FN. 5, p. 524) was held to be constitutional. This statute was passed in 1965 to soften the strict law of the past which allowed an illegitimate to inherit only from his mother. Unlike the statute in *Trimble* the New York law did not disqualify an unnecessarily large number of illegitimate children but only barred inheritance when the illegitimate had failed to obtain a filiation order during the father's lifetime. The state's primary goal, i. e., the requirement of a filiation order during the lifetime of the father, was held to be substantially related to the important state interest and therefore the statute was not unconstitutional under the Equal Protection Clause.

The Supreme Court recognized the New York Legislature intended to give illegitimates "in so far as practicable" inheritance rights on the same level as legitimates and simultaneously guard the important and acceptable state goals. Different from the statute reviewed in *Trimble*, the New York statute was the result of the legislature's having considered and enacted "the possiblity of a middle ground between the extremes of complete exclusion and case-by-case determination of paternity." *Trimble* at 1465. Emphasizing these and other differences between the Illinois and New York laws (via., the Illinois requirement of marriage and the Illinois goal of promotion of family

relationships), the Supreme Court held the New York statute to be a constitutionally acceptable means of achieving the state's rational goal of orderly property devolution because these means were substantially related to that goal.

In our view *Lalli* is neither a limitation upon nor an overruling of *Trimble* and its underlying rationale. Rather, the Supreme Court used the *Trimble* approach (the middle level of a equal protection analysis) to determine whether the New York statute is constitutional. In so deciding, the court elucidates what type of statute will be held to balance acceptably the equal protection rights of the illegitimate and the achievement of the state goals of a stable property system and orderly distribution of intestate property.

The following quotes from the *Trimble* and *Lalli* opinions clearly announce that any state statute which totally disinherits illegitimates is invalid for the reason that it violates the Equal Protection provision of the U. S. Constitution:

> "For at least some significant categories of illegitimate children of intestate men, inheritance rights can be recognized without jeopardizing the orderly settlement of estates or the dependability of titles to property passing under intestacy laws. Because it excludes those categories of illegitimate children unnecessarily, Section 12 is constitutionally flawed." *Trimble* at 1465.

> "The Illinois statute in *Trimble* was constitutionally unacceptable because it effected a total statutory disinheritance of children born out of wedlock who were not legitimated by the subsequent marriage of their parents. The reach of the statute was far in excess of its justifiable purpose." *Lalli* at 527.

We begin our analysis of Article 919 with the recognition that the goals is seeks to achieve are stability in land titles and an orderly devolution of property upon death. These goals are of course proper, but the means sought to achieve them must be substantially related to the state interest which Article 919 seeks to serve. As stated in *Lalli* at 525:

> "this interest is directly implicated in paternal inheritance by illegitimate children because of the peculiar problems of proof that are involved."

Lalli recognized the problems that argue against treating illegitimates identical to all other heirs of an intestate father-proof of paternity, service of process, finality of decrees in estate distribution, spurious claims. None of these difficulties, however, justify a state statute which statutorily bars any illegitimate from participating in his father's estate as does Article 919. Art. 919 serves to achieve the proper state goal by excluding each and every acknowledged illegitimate child who happens to have the statistically probable misfortune of having his natural father survived by any legitimate descendant, any ascendant, any collateral relation, or a wife. This meat-ax effect of cutting out illegitimates in all conceivable situations (except for the happenstance of the natural child's being his father's sole survivor) is certainly not "tuned to alternative considerations". The means devised are not substantially related to the goals sought to be achieved in that the same goal could be achieved by not excluding significant categories of illegitimates who could be allowed to inherit without disrupting the orderly settlement of the estates of instate fathers. Article 919 effects a total statutory disinheritance of acknowledged illegitimates who natural fathers are survived by either legitimate descendants, ascendants, collaterals, or surviving spouse. "The reach of the statute was far in excess of its justifiable purposes." *Lalli* at 518, discussing the Illinois statute struck down in

Trimble. Article 919 likewise stretches too far when it pushes outside the parameters of intestate successions all illegitimates who are not sole surviviors of their fathers. Because the illigitimates here were excluded from their father's succession without ever having any procedural opportunity to place themselves in his intestate succession (despite the fact that they were acknowledged, they did not have the statutory device available to the illegitimate in *Lalli*), Article 919 disinherits too broadly and thus violates the Equal Protection Clause by failing to have a substantial relationship to its goal.

After *Labine*, supra, was decided in 1971, the 1974 Louisiana Constitution was adopted, and it significantly contained a mandatory prohibition against any arbitrary, capricious or unreasonable discrimination based on a person's birth. Art. 1 S3 provides as follows:

> "No person shall be denied equal protection of the law. No law shall discriminate against a person because of race or religious ideas, beliefs, or affiliations. No law shall arbitrarily, capriciously, or unreasonably discriminate against a person because of birth, age, sex, culture, physical condition, or political ideas or affiliations. Slavery and involuntary servitude are prohibited, except in the latter case as punishment for crime." (emphasis ours).

The members of the Constitutional Convention intended this Article to include:

> "Therefore, it is clear that the Louisiana Constitution requires an examination of any law which discriminates on the basis of birth to determine whether the stautory distinction is arbitrary, capricious, or unreasonable."

Our conclusion that Article 919 violates the right to equal protection of the laws of illegitimates because (1) the total exclusion means adopted by Article 919 bears no substantial relation to the state goal of the protection of land titles and (2) the distinction drawn between these illegitimate children and all other relations of the decedent is arbitrary, capricious, and unreasonable is not a startling new development. It is one further extension in a line of judicial determinations striking down Louisiana laws which discriminate unconstitutionally against illegitimates.

The U. S. Supreme Court has three times invalidated Louisiana statutes because of their denial of equal protection rights to illegitimates. *Levy V. La.*, 391 U. S. 68, 88 S. Ct. 1509, 20 L. Ed. 2d 436 (1968), struck down the discriminatory effect of our wrongful death statute (LSA-C.C. 2315) as applied to illegitimates because it gave legitimate, but not illegitimate, children a cause of action for the wrongful death of their parents. In *Weber V. Aetna Casualty and Surety Co.*, 406 U. S. 164, S. Ct. 1400, 31 L. Ed. 2d 768 (1972), a provision of our workman's compensation law was held to violate the Equal Protection Clause because it denied equal recovery rights dependent unacknowledged illegitimates. *Glona V. American Guarantee & Liability Insurance Co.*, 391 U. S. 73, 88 S. Ct. 1515, 20 L. Ed. 2d 441 (1968) likewise ruled unconstitutional a construction of LSA-C.C. 2315 that denied a cause of action to a mother for the wrongful death of illegitimate child.

The Louisiana Supreme Court has found unconstitutional under Art. 1 Sec. 3 of the 1974 Constitution testate codal provisions which discriminate against illegitimates. *Succn. of Thompson*, supra, found Article 1483, which denied acknowledged illegitimates the right to receive by testament any amount beyond mere alimony when there were legitimate descendants

of the testator, to be an arbitrary, capricious, and unreasonable statutory distinction based upon birth in violation of the constitutional prohibition. Earlier, C. C. Article 1488 was also held to be a violation of the rights granted illegitimates in Art. 1 Sec. 3 because it prevented a parent from bequeathing any substantial part of his estate to a child conceived of an adulterous or incestuous connection. *Succession of Robins*, 349 So. 2d 276 (La. 1977).

The Louisiana Supreme Court recently granted writs for the purpose of considering the constitutionality of Article 919 (see Justice Tate's dissent in the original hearing). In this case the trial court held that two acknowledged illegitimates were not called to the succession of their natural father because of the existence of a collateral relation, the decedent's sister. *Quiett V. Estate of Moore*, So. 2d . . . (La. 1979) (No. 63,993, Sept. 4, 1979). On the original hearing and the rehearing (Dec. 13, 1979) the court declined to consider the constitutional issue and decided the case on other grounds.

We hold that Article 1 Sec. 3 of the Louisiana Constitution prohibits the total denial of inheritance rights of acknowledged illegitimates in the successions of their natural fathers who are survived by other relations, even though Article 919 is designed to serve the important state purpose of protecting land titles. The unlimited discrimination present in Article 919 is unreasonable and arbitrary and thus contrary to the provisions of our State Constitution. Although Article 919 has the sound purpose of protecting the reliability of property titles, the same purpose could be satisfactorily guaranteed by the legislature's providing necessary test and guidelines to assure all illegitimates could inherit equally with legitimates except those illegitimates to whom granting such a right of inheritance would tend to have the effect of creating instability of titles.

The method chosen by the legislature to achieve this equality could take any of several forms. The New York Legislature did it by requiring the illegitimate to establish paternity with two years of his birth and before his father's death. See *Lalli*, supra. The U. S. Supreme Court, applying their jurisprudentially developed guidelines of reasonableness, found this plan (at least as to the requirement of a filiation order before the father's death) to be constitutionally acceptable. As suggested by H. Alston Johnson in his Report to the Louisiana State Law Institute (Revision of the Louisiana Civil Code of 1870, Bk III, Titles I and II, Successions and Donations, Dec. 7, 1979), the Louisiana Legislature could require proof of filiation to be made (1) only during the lifetime of the father, (2) within six months of the father's death, or (3) within six months after the majority of the illegitimate claiming as heir. The statutory scheme is one which is peculiarly within the province of the legislature:

> "The orderly disposition of property at death requires and appropriate legal framework, the structuring of which is a matter particularly within the competence of the individual states. In exercising this responsibility, a State necessarily must enact laws governing both the procedure and substance of intestate succession." *Trimble* at 1465.

Our legislature could and should protect the soundness of our land titles by evolving a test permitting illegitimates to inherit equally with legitimates under circumstances where such a rule does not endanger title soundness, and prohibiting their right to inherit equally when to do so would threaten the stability of titles. A legislative rule conceived along these lines would not be unreasonable or arbitrary even though necessarily containing some discrimination based upon birth and under these circumstances would not be contrary to Article 1, Sec. 3.

This function being legislative rather than judicial, we have no choice but to hold that Article 919 in its present form is contrary to the Louisiana Constitution. We anticipate that the Legislature will in the near future address itself to the problem of protecting our land titles against spurious of stale claims of persons asserting their status as acknowledged illegitimates and therefore as heirs in such a manner that the new statute will meet the test of constitutionality under both the Louisiana and the U. S. Constitutions.

The judgment below is REVERSED and the judgment of possession initially rendered in this succession signed February 23, 1978 is annulled. The case is REMANDED in order for the trial court to determine the amount which defendant received from the sale of the succession property so that an accounting may be made in accordance with a new judgment of possession to be rendered in accordance with the views here expressed, and for such further proceedings as may be appropriate and in accordance with law. Appellee is assessed all cost.

EXHIBIT C

FIRST JUDICIAL DISTRICT COURT
PARISH OF CADDO
Shreveport, Louisiana 71101
April 24, 1979

Before
Hon. John R. Ballard, District Judge

SUCCESSION OF SIDNEY BROWN, JR.

No. 250, 974

FINAL JUDGEMENT

THIS CAUSE CAME ON THIS 24th DAY TO BE HEARD.

PRESENT: JOHN M. MADISON, JR. Attorney for Plaintiffs,

S. P. DAVIS Law Firm, Attorney for Defendant.

After hearing the pleadings, evidence, and arguments of counsel, the Court considering the law and the evidence to be in favor of the defendant, Effie Brown and against Plaintiffs; Nathaniel E. Brown, Ruby Atkins, Betty Jean Lee and Eugene Brown, for the reasons this day orally assigned.

IT IS ORDERED, ADJUDGED AND DECREED That all of the demands of Plaintiffs' be rejected at their costs.

JUDGMENT RENDERED IN OPEN COURT, READ AND SIGNED IN CHAMBERS on this the 24th day of April, 1979, at Shreveport, Louisiana.

/s/ John R. Ballard
Honorable John R. Ballad
District Court Judge

EXHIBIT D

SUPREME COURT OF LOUISIANA

New Orleans, La. 70112

On the 24th day of October, 1980, the following action

was taken by the Supreme Court of Louisiana in the case listed below:

REHEARING DENIED:

67,211 Succession of Sidney Brown, Jr. DIXON, C. J. MARCUS, & WATSON, J. J., would grant the rehearing

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EXHIBIT E

SUPREME COURT OF LOUISIANA
New Orleans, La. 70112
Hon. John A. Dixon, Jr. C. J.

STAY ORDER

CONSIDERING THE FOREGOING AND FOR GOOD CAUSE SHOWN THEREIN:

IT IS ORDERED, ADJUDGED AND DECREED that this Court's Judgment of September 3, 1980 in the Case of SUCCESSION OF SIDNEY BROWN, JR., Docket No. 67,211 is hereby ORDERED STAYED pending the filing by Defendant-Appellant of its Petition for Writ of Certiorari in the U. S. Supreme Court (within 60 days) and until Final Disposition therein of this case.

/s/ John A. Dixon, Jr. C. J.
SUPREME COURT JUSTICE

NOTE: The is advised that Chief Justice Dixon inserted the (within 60 days) into the above order which was signed November 10, 1980.

EXHIBIT F

Fourteenth Amendment
CONSTITUTION of the UNITED STATES

Section 1. All persons born or naturalized in the United States, and suject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; Nor shall any State deprive any person of life, liberty, or property, without due process of law; Nor deny to any person within it jurisdiction the equal protection of the laws.

Article 1 Section 3
LOUISIANA CONSTITUTION OF 1974

Section 3. No person shall be denied the equal protection of the laws. No law shall discriminate against a person because of race or religious ideas, beliefs, or affiliations. No law shall arbitrarily, Capriciously, or unreasonably discriminate against a person because of birth, age, sex, culture, physical condition, or political ideas or affiliations. Slavery and involuntary servitude are prohibited, except in the latter case as punishment for Crime.

LOUISIANA CIVIL CODE
Article 919

Illegitimate children are called to the inheritance of their father, who has duly acknowledged them, when he has left no descendants nor ascendants, nor collateral relations, nor surviving wife, and to the exclusion only of the State.

In all other cases, they can only bring an action against their father, or his heirs for alimony, the amount of which shall be determined, as in directed in the Title: Of Father and Child.

EXHIBIT G

CERTIFICATE OF SERVICE

I, Charles E. Welsh, on behalf of the Attorney General of the State of Louisiana do hereby acknowledged that I have had served on me by S. P. Davis Counsel of Record for Petitioner, Effie Brown a copy of the Petition for Certiorari this 15 day of January 1981.

ATTORNEY GENERAL'S OFFICE
State of Louisiana

BY: Charles E. Welsh
by Bobbye B Baldwin
1525 Fairfield Ave.
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